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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LAFAYETTE HAYES,

Plaintiff,

v.

DR. WILLIAMS, et al.,

Defendants.

No. C 05-0070 RMW (PR)

ORDER OF SERVICE

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Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against medical personnel at San Quentin State Prison. Plaintiff has been granted leave to proceed in forma pauperis in a separate order. Plaintiff filed an amended complaint on June 15, 2005. The court will order service of the amended complaint.

BACKGROUND

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On August 30, 2004, Plaintiff arrived at San Quentin State Prison and was seen by Dr. Clarke for his knee injury. Plaintiff provided Dr. Clarke with his discharge papers from San Jose Medical Center's emergency room with a diagnostic evaluation and further appointment on August 31, 2004 to see an orthopedic specialist to schedule surgery. Plaintiff alleges that Dr. Clarke failed to order X-rays and a MRI, failed to order lower

1 tier bunk status for plaintiff with a knee brace and crutches. Dr. Clarke did not place
2 plaintiff on a medical hold for treatment at San Quentin and did not provide plaintiff with
3 a mobility impaired vest. See Amended Complaint at 3, ¶ III(A).

4 On September 10, 2004, plaintiff filed a reasonable modification category 18,
5 California Department of Correction (“CDC”) form 1824, describing his knee injury and
6 requesting the following: a knee immobilizer or knee supporter, surgery by an orthopedic
7 specialist and specialized housing with a lower bunk/lower tier requirement or infirmary
8 housing. On September 23, 2004, plaintiff was interviewed and examined by Dr.
9 Christensen. Plaintiff was given a chrono for the lower first tier housing for ninety days.
10 An orthopedic consult was approved and plaintiff’s administrative appeal was partially
11 granted. Plaintiff claims that Dr. Christensen failed to: (1) order X-rays or a MRI;
12 (2) place him on a medical hold so that he would not be transferred until the orthopedic
13 consult took place; (3) provide plaintiff with a yellow mobility impaired vest; and (4)
14 provide plaintiff with a “chrono” limiting plaintiff’s mobility. See Amended Complaint
15 at ¶ III-B.

16 On September 28, 2004, Dr. Williams, Health Care Manager at San Quentin,
17 became aware of plaintiff’s knee problem. Defendant Williams signed a disability
18 placement verification (CDC 128-C) form for plaintiff. However, Dr. Williams did not
19 make any recommendation for plaintiff’s further medical care and treatment, or question
20 why a MRI or X-ray was not ordered for plaintiff. Dr. Williams failed to request a
21 medical hold for plaintiff to receive treatment before being transferred, and failed to
22 properly review plaintiff’s administrative appeals concerning medical care at San Quentin
23 State prison. See Amended Complaint at ¶ III-C.

24 Plaintiff was transferred to the Sierra Conservation Center in October 2004.
25 Plaintiff was seen by Dr. Howard and prescribed pain medication. Dr. Howard wrote an
26 urgent request for an orthopedic consult and MRI for plaintiff. Plaintiff was placed on a
27 medical hold for four months. Plaintiff’s MRI showed additional damage to his knee - a
28 completely torn tendon. The orthopedic doctor asked plaintiff when his injury occurred

1 and told plaintiff that he should have received surgery within the first three weeks of his
 2 injury. The orthopedic doctor was going to operate on plaintiff, but plaintiff was paroled
 3 on February 8, 2005. See Amended Complaint at ¶ III-D.

4 In March 2005, after his release from prison, plaintiff was treated for his knee
 5 injury at Santa Clara Valley Medical Center. Plaintiff was told that his injury was so old
 6 that an operation would now cause damage to his muscles because they would have to cut
 7 soft tissue from his tendon. The re-attachment of the tendon would take two-and-a-half
 8 hours and up to twelve months of extensive rehabilitation. See Amended Complaint at ¶
 9 III-D.

10 Plaintiff names the following defendants in his amended complaint: Dr. Williams,
 11 Health Care Manager at San Quentin State Prison; Dr. Clarke, staff physician at San
 12 Quentin State Prison; and Dr. Christensen, staff physician at San Quentin State Prison.
 13 Plaintiff alleges that he was subjected to defendants' deliberate acts of omission that was
 14 intended to inflict pain and suffering related to an already pre-existing injury. Plaintiff
 15 maintains that defendants knowingly and willfully subjected him to further risk of future
 16 harm creating a serious indifference to a serious medical need. Plaintiff seeks
 17 compensatory and punitive monetary damages and reasonable attorneys fees. See
 18 Amended Complaint at ¶ III-E.

19 DISCUSSION

20 A. Standard of Review

21 Federal courts must engage in a preliminary screening of cases in which prisoners
 22 seek redress from a governmental entity or officer or employee of a governmental entity.
 23 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and
 24 dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief
 25 may be granted, or seek monetary relief from a defendant who is immune from such
 26 relief. Id. at 1915A(b)(1),(2). Pro se pleadings must, however, be liberally construed.
 27 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

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1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
 2 elements: (1) that a right secured by the Constitution or laws of the United States was
 3 violated, and (2) that the alleged deprivation was committed by a person acting under the
 4 color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

5 B. Plaintiff's Claim

6 Deliberate indifference to serious medical needs violates the Eighth Amendment's
 7 proscription against cruel and unusual punishment. See Estelle v. Gamble, 429 U.S. 97,
 8 104 (1976); McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other
 9 grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en
 10 banc); Jones v. Johnson, 781 F.2d 769, 771 (9th Cir. 1986). A determination of
 11 "deliberate indifference" involves an examination of two elements: the seriousness of the
 12 prisoner's medical need and the nature of the defendant's response to that need. See
 13 McGuckin, 974 F.2d at 1059.

14 A "serious" medical need exists if the failure to treat a prisoner's condition could
 15 result in further significant injury or the "unnecessary and wanton infliction of pain." Id.
 16 (citing Estelle v. Gamble, 429 U.S. at 104). The existence of an injury that a reasonable
 17 doctor or patient would find important and worthy of comment or treatment; the presence
 18 of a medical condition that significantly affects an individual's daily activities; or the
 19 existence of chronic and substantial pain are examples of indications that a prisoner has a
 20 "serious" need for medical treatment. See id. at 1059-60 (citing Wood v. Housewright,
 21 900 F.2d 1332, 1337-41 (9th Cir. 1990)).

22 A prison official is deliberately indifferent if he knows that a prisoner faces a
 23 substantial risk of serious harm and disregards that risk by failing to take reasonable steps
 24 to abate it. Farmer v. Brennan, 511 U.S. 825, 837 (1994). The prison official must not
 25 only "be aware of facts from which the inference could be drawn that a substantial risk of
 26 serious harm exists," but he "must also draw the inference." Id. If a prison official
 27 should have been aware of the risk, but was not, then the official has not violated the
 28 Eighth Amendment, no matter how severe the risk. Gibson v. County of Washoe, 290

1 F.3d 1175, 1188 (9th Cir. 2002).

2 In order for deliberate indifference to be established, therefore, there must be a
 3 purposeful act or failure to act on the part of the defendant and resulting harm. See
 4 McGuckin, 974 F.2d at 1060; Shapley v. Nevada Bd. of State Prison Comm'rs, 766 F.2d
 5 404, 407 (9th Cir. 1985). A finding that the defendant's activities resulted in
 6 "substantial" harm to the prisoner is not necessary, however. Neither a finding that a
 7 defendant's actions are egregious nor that they resulted in significant injury to a prisoner
 8 is required to establish a violation of the prisoner's federal constitutional rights. See
 9 McGuckin, 974 F.2d at 1060, 1061 (citing Hudson v. McMillian, 503 U.S. 1, 7-10 (1992)
 10 (rejecting "significant injury" requirement and noting that Constitution is violated
 11 "whether or not significant injury is evident"))).

12 Liberally construed, plaintiff has alleged a cognizable claim against defendants
 13 Williams, Clarke and Christensen for deliberate indifference to his medical needs. The
 14 court will order service of the amended complaint.

15 CONCLUSION

16 1. The clerk shall issue a summons and the United States Marshal shall serve,
 17 without prepayment of fees, copies of the amended complaint in this matter (docket no.
 18 7), all attachments thereto, and copies of this order on defendant DR. WILLIAMS, San
 19 Quentin State Prison Health Care Manager, defendant DR. CLARKE, M.D., Staff
 20 Physician at San Quentin State Prison, and defendant DR. CHRISTENSEN, Staff
 21 Physician at San Quentin State Prison. The clerk shall also serve a copy of this order on
 22 plaintiff.

23 2. The clerk shall TERMINATE all other named defendants reflected on the
 24 court's docket that are not listed in the amended complaint, defendants Dr. Howard and
 25 the State of California.

26 3. In order to expedite the resolution of this case, the court orders as follows:
 27 a. No later than **sixty (60) days** from the date of this order, defendants
 28 shall file a motion for summary judgment or other dispositive motion, or shall notify the

1 court that defendant is of the opinion that this case cannot be resolved by such a motion.
 2 The motion shall be supported by adequate factual documentation and shall conform in all
 3 respects to Federal Rule of Civil Procedure 56.

4 **Defendants are advised that summary judgment cannot be granted, nor**
 5 **qualified immunity found, if material facts are in dispute. If defendants are of the**
 6 **opinion that this case cannot be resolved by summary judgment, they shall so inform**
 7 **the court prior to the date the summary judgment motion is due.**

8 All papers filed with the court shall be promptly served on plaintiff.

9 b. Plaintiff's opposition to the dispositive motion shall be filed with the
 10 court and served on defendants no later than **thirty (30) days** from the date defendants'
 11 motion is filed. The Ninth Circuit has held that the following notice should be given to
 12 plaintiffs:

13 The defendants have made a motion for summary judgment
 14 by which they seek to have your case dismissed. A motion for
 15 summary judgment under Rule 56 of the Federal Rules of Civil
 16 Procedure will, if granted, end your case.

17 Rule 56 tells you what you must do in order to oppose
 18 a motion for summary judgment. Generally, summary
 19 judgment must be granted when there is no genuine issue of
 20 material fact--that is, if there is no real dispute about any fact
 21 that would affect the result of your case, the party who asked
 22 for summary judgment is entitled to judgment as a matter of
 23 law, which will end your case. When a party you are suing
 24 makes a motion for summary judgment that is properly
 supported by declarations (or other sworn testimony), you
 cannot simply rely on what your complaint says. Instead, you
 must set out specific facts in declarations, depositions,
 answers to interrogatories, or authenticated documents, as
 provided in Rule 56(e), that contradict the facts shown in the
 defendant's declarations and documents and show that there is
 a genuine issue of material fact for trial. If you do not submit
 your own evidence in opposition, summary judgment, if
 appropriate, may be entered against you. If summary
 judgment is granted in favor of defendants, your case will be
 dismissed and there will be no trial.

25 See Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc).

26 Plaintiff is advised to read Rule 56 of the Federal Rules of Civil Procedure and
 27 Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986) (holding
 28 party opposing summary judgment must come forward with evidence showing triable

1 issues of material fact on every essential element of his claim). Plaintiff is cautioned that
2 failure to file an opposition to defendants' motion for summary judgment may be deemed
3 to be a consent by plaintiff to the granting of the motion, and granting of judgment
4 against plaintiff without a trial. See Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)
5 (per curiam); Brydges v. Lewis, 18 F.3d 651, 653 (9th Cir. 1994).

6 c. Defendants shall file a reply brief no later than **fifteen (15) days**
7 after plaintiff's opposition is filed.

8 d. The motion shall be deemed submitted as of the date the reply brief
9 is due. No hearing will be held on the motion unless the court so orders at a later date.

10 4. All communications by the plaintiff with the court must be served on
11 defendants, or defendants' counsel once counsel has been designated, by mailing a true
12 copy of the document to defendant or defendants' counsel.

13 5. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the
14 court and the parties informed of any change of address and must comply with the court's
15 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
16 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

17 6. Discovery may be taken in accordance with the Federal Rules of Civil
18 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or
19 Local Rule 16-1 is required before the parties may conduct discovery.

20 IT IS SO ORDERED.

21 DATED: 4/10/2006

22 /s/ Ronald M. Whyte
RONALD M. WHYTE
United States District Judge

1 This is to certify that on April 11, 2006, a copy of this
2 ruling was mailed to the following:

3 Lafayette Hayes
4 2011 Little Orchard Street
5 San Jose, CA 95125
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